

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 13 2003

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MANAGING DIRECTOR

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1615 L Street, N.W.
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RE: SpaceData International, L.L.C., Waiver of the
Regulatory Fees to Operate In-Orbit Satellites
Fee Control Number 00000 RROG 03 024

Dear Counsel:

This is in response to the Request dated September 19, 2002 on behalf of SpaceData International LLC (SDI) seeking a waiver and deferral of the fiscal year (FY) 2002 regulatory fees¹ due on four in-orbit satellites in the aggregate amount of \$398,800.

SDI is licensed to operate for commercial purposes, on a time-share basis, four satellites now operating as part of the Tracking and Data Relay Satellite System ("TDRSS"), owned by the National Aeronautics and Space Administration (NASA). The satellites were launched by NASA in 1983. The authorization enables SDI to provide services to seismic exploration vessels surveying the ocean floor. SDI may use a TDRSS satellite only during times that NASA determines that it will not need to use that satellite, and that SDI's use will not cause harmful interference to any U.S. Government operations. *See SpaceData International LLC, Order and Authorization*, 16 FCC Rcd 9266 (IB 2001).

In support of waiver, you make two arguments. You initially assert that SDI is an operator of the space stations in name only; that is, it does not control or operate the four satellites, but instead retains only a right to request use of the capacity. You add that SDI has no say in which space station or which transponder is actually used. Because the satellites belong to NASA, you argue that SDI's license is not worth as much as those granted other satellite operators and should not result in the same fee obligation. As a second ground for waiver, you argue that SDI lacks the financial resources to pay the fees. You assert that SDI has debts of over \$4 million, no current income, and cash assets of only \$12,000. You submit supporting exhibits, which include a September 4, 2002 Declaration under penalty of perjury of Frank Van Rensselaer, SDI's Chief Executive Officer, who asserts that SDI has had no paid employees since September 1, 2001; SDI's 2001 United States income tax returns, i.e., Form 1065, U.S. Return of Partnership

¹ By this letter, we are granting your request that we defer the requirement to submit the fees until a decision is rendered on the request for the waiver.

Phillip L. Spector, Esq.
Laura B. Sherman, Esq.
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2.

Income, Form 4562, Depreciation and Amortization, with schedules; and SDI's Balance Sheet and Profit and Loss Statements for 2001.

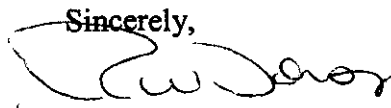
In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995).

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

Our review of the financial documentation you submitted indicates that SDI suffered a significant financial deficit in 2001 without regard to its deductions for depreciation and payments made to principals. Thus, SDI's 2001 federal partnership income tax return shows income of \$491,440 and deductions of \$2,448,211 for a net loss of \$1,956,771. This loss was only partially offset by depreciation expense of \$799,151 and guaranteed payments to partners of \$284,500. SDI's profit and loss statement for 2001 also shows a substantial financial loss notwithstanding depreciation expense and payments to principals. Moreover, Mr. Van Rensselaer, SDI's Chief Executive Officer, affirms that SDI has not paid salaries to any officers since September 2001 and, as of September 2002, has no customers or operating revenue. Accordingly, in light of your compelling showing of financial hardship, your request for waiver of the FY 2002 regulatory fees is granted.²

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

² In view of this ruling, it is unnecessary to reach SDI's other argument in support of waiver relief.

00000RROG-03-024

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September 19, 2002

Mr. Andrew Fishel
Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Waiver of the Regulatory Fee for a License to Operate
In-Orbit Satellites

Dear Mr. Fishel:

Pursuant to Sections 1.3 and 1.1166 of the Commission's Rules, 47 CFR §§ 1.3, 1.1166, SpaceData International LLC ("SDI") hereby requests a (i) waiver of the required annual regulatory fees for in-orbit satellites, and (ii) deferral of payment of such fees until such time as the Commission rules on such waiver request.

I. Introduction

On May 1, 2001, the Commission issued a license to SDI to operate on a time-share basis four identical radio stations, comprising the Tracking and Data Relay Satellite System ("TDRSS"), operated by the National Aeronautics and Space Administration ("NASA"), and to utilize the associated radio frequencies.¹ These four geo-stationary satellites were launched by NASA in 1983 and are currently operational. SDI has a contract with NASA (via NASA's contractor) to use a small percentage of the TDRSS Ku-band capacity on a preemptible basis to transmit data from ocean-going seismic exploration vessels through NASA's control center in White Sands, New

¹ See Application of SpaceData International, LLC, *Order and Authorization*, 16 FCC Rcd 9266 (Int'l Bur., 2001) ("SDI Order").

Mexico, to land-based data processing centers. In issuing the *SDI Order*, the Commission noted that SDI's

operations are extremely limited. SDI may use a TDRSS satellite only during the times that NASA determines that it will not need to use that satellite and that SDI's operations will not cause harmful interference to any U.S. Government operations.

The Commission imposes a fee of \$99,700 for each space station covered by a license to operate a geo-stationary space station.² Unless the Commission waives the regulatory fee, SDI will be required to pay \$398,800. Since NASA, not SDI, truly operates these TDRSS satellites, SDI should not have to pay any regulatory fees. In any case, as described below, SDI does not have the resources to pay \$398,800, so a waiver is absolutely necessary in order for SDI to retain its license. For the same reason, SDI requests that the Commission defer payment of any fee until such time as the Commission acts on SDI's request for a waiver.

II. The Commission Should Waive the Annual Regulatory Fee

A. Standard for Waiver

The purpose of the Commission's fee program is to enable the Commission "to assess and collect charges for certain regulatory services it provides to the public. The charges are based primarily on the Commission's costs of providing these regulatory services."³ The services include enforcement activities, policy and rulemaking activities, user information services and international activities.⁴ The Commission is instructed to adjust fees

to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other

² Schedule of Regulatory Fees and Filing Locations for International Services, 47 CFR § 1.1156.

³ See Establishment of a Fee Collection Program to Implement Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947 (1987). See also, 47 U.S.C. § 159.

⁴ See 47 U.S.C. § 159(a)(1).

factors that the Commission determines are necessary in the public interest.⁵

In addition, the Commission may waive, reduce or defer regulatory fees in certain instances "for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d). Although the Commission has traditionally been very reluctant to exercise its waiver authority,⁶ it has done so, for example, where the services provided by the Commission would "bear scant, if any, relation to the Commission's cost of processing" an application.⁷

In the case of SDI's request to waive the application fee for its use of the TDRSS satellites, the Commission noted the "unique nature of the circumstances related to SDI's proposed operation" and as a result significantly reduced the application fee payable.⁸ In another case related to use of TDRSS, the Commission agreed to waive a portion of Columbia Communications Corporation's ("Columbia") regulatory fees for lease of transponders on two TDRSS satellites because NASA had ultimate control of the satellites and Columbia paid a percentage of its revenues to NASA.⁹ Finally, the Commission has the authority to waive regulatory fees where a petitioner presents a compelling case of financial hardship.¹⁰

B. A Waiver is Appropriate in this Case

SDI is an "operator" of four space stations in name only. As noted in the *Reger Letter*, SDI's proposed use of the TDRSS space stations involves only SDI's operation of SDI-owned transmit-receive earth stations aboard non-U.S. flagged

⁵ See 47 U.S.C. § 159(b)(1)(A).

⁶ See Application of Columbia Communications Corporation for Partial Waiver of its Regulatory Fee Payment for Two Geo-stationary Space Stations, *Memorandum Opinion and Order*, 14 FCC Rcd 1122 (1999) ("*Columbia Order*").

⁷ See Letter dated February 26, 1997 of Marilyn McDermott, Associate Managing Director for Operations, Federal Communications Commission to Norman P. Leventhal and David S. Keir, counsel for Grupo Televisa S.A.

⁸ See Letter dated November 2, 2000 of Mark A. Reger, Chief Financial Officer, Federal Communications Commission to Phillip L. Spector, counsel for SDI ("*Reger Letter*").

⁹ *Columbia Order*, 14 FCC Rcd at 1123.

¹⁰ See Implementation of Section 9 of the Communications Act 9 FCC Rcd 5333, 5346 (1994).

vessels.¹¹ SDI does not have the right to use particular transponders on TDRSS space stations, to point those transponders at any particular earth station or to turn those transponders on or off at will.¹² Instead, SDI has the right to ask NASA (through NASA's contractor, Lockheed Martin) to use NASA's transponder capacity to transmit up to 3,000 minutes per day if capacity is available.¹³ SDI must ask NASA to point the relevant space station at the ocean-going vessel and has no say in which space station or which transponder is actually used. NASA can stop the transmission at any time by pointing the antenna away from the ground station. In addition, SDI can transmit or receive only when capacity is available because government users do not need it.

These facts distinguish SDI's use of TDRSS from that of Columbia. SDI has no operational responsibility for and no control in its use of TDRSS satellites. In granting Columbia authority to lease the C-band transponders on the two TDRSS satellites, the Commission found that Columbia had responsibility for the TT&C functions for the transponders with no involvement by NASA, was responsible for access to and from the satellite's C-band capacity, could use all of the C-band capacity on those transponders at any time and for any application and had the exclusive right to provide service over the leased transponders.¹⁴ SDI does have any of these capabilities.

SDI is not in a position to take advantage of Commission services. It does not benefit from international activities since the satellites belong to NASA. Nor is it affected by rulemakings or decisions on other satellites since by its nature the SeismicStar service can only be provided over TDRSS satellites.¹⁵ Furthermore, SDI's license is not worth the same as those granted to real geo-stationary satellite operators. NASA can preempt SDI's use at any time or move the TDRSS satellites to positions that

¹¹ *Reger Letter* at 2.

¹² *See Columbia Communications Corporation Request for Reduction of Regulatory Fee Payments for Fiscal Year 1994, Application for Review*, filed September 8, 1995 at 2.

¹³ *See Declaration of Frank Van Rensselaer, Chief Executive Officer, SDI*, at ¶ 2 ("*Van Rensselaer Declaration*").

¹⁴ *See Columbia Communications Corporation, Application for Authority to Use and Offer for Lease the C-Band Transponders on the NASA TDRSS Satellites at 41° W.L. and 174 W.L., Memorandum Opinion and Order*, 7 FCC Rcd 122 (1991).

¹⁵ *See Application of SpaceData International LLC for Authority to Operate on a Time Share Basis NASA's Tracking and Data Relay System, Order and Authorization*, 16 FCC Rcd 9271 (2001).

render them unusable for ocean-going seismic surveying vessels.¹⁶ Most important, as a basic operating cost, SDI pays NASA for every antennae minute used.¹⁷ Imposing a regulatory fee on SDI would effectively require it to pay twice to use the same government resource.

Thus, focusing on the statutory basis for imposing regulatory fees – operation of a spacecraft and services provided and benefits received by an operator of a satellite – it should be clear that SDI should not be required to pay regulatory fees for its use of the four TDRSS satellites.

C. SDI Has a Compelling Case of Financial Hardship

The Commission has stated that it will grant a fee waiver where a “petitioner presents a compelling case of financial hardship” and submits documentation that demonstrates that the fee payments impose an undue burden.¹⁸ In making its determination, the Commission examines information such as “a balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of [the applicant’s] officers and [the applicant’s] highest paid employees, other than officers, and the amount of their compensation, or similar information.”¹⁹

SDI does not have the resources to pay a filing fee of \$398,800. As shown in the *Van Rensselaer Declaration*, he is currently the only employee and has not received a salary since September 2001.²⁰ Jay Gnowles, who previously served as President, did not receive a salary from September 2001 until he left the company in March 2002.²¹ SDI’s year 2001 tax return (attached as Exhibit 2) and its balance sheet and profit and loss statement (attached as Exhibit 3) show very clearly that SDI has

¹⁶ In the *Columbia Order*, 14 FCC Rcd at 1123 reducing the regulatory fees of Columbia Communications Corporation, the Commission found it “pertinent that the usefulness of the license we have granted to Columbia is subject to change upon minimal notice from NASA, another government body.”

¹⁷ See *Van Rensselaer Declaration* at ¶ 2.

¹⁸ See Letter to Jane Goode Breder from Mark Reger, Chief Financial Officer, dated July 15, 1999 (“Breder Letter”)(comparing Implementation of Section 9 of the Communications Act, *Report and Order*, 9 FCC Rcd. 5333, 5346 (1994), *recon. grtd*, 10 FCC Rcd. 12759 (1995)).

¹⁹ *Id.* at 12761-12762.

²⁰ *Van Rensselaer Declaration* at ¶ 6.

²¹ *Id.*

virtually no assets (other than equipment subject to vendor's liens), a negative net worth and almost \$2 million of income loss. SDI has debts of over \$4 million and no current income.²² Its total available cash at this time is \$12,000.²³

D. The Public Interest Would Be Served by a Waiver

The public interest would be served by grant of the waiver. SDI hopes to provide a service that is not currently available and that will greatly improve oil and gas exploration, thus supporting the development of valuable energy resources and benefiting U.S. consumers. Providing the service will fulfill a Congressional and Executive Branch goal of commercializing space assets. Since SDI only uses TDRSS capacity when it is not being used by the government, SDI is utilizing assets that would otherwise be wasted. Most important, once operations commence, SDI will pay about half of its revenues for use of TDRSS to NASA, enabling NASA to carry out other projects that will benefit the public.

III. The Commission Should Grant a Deferral of the Regulatory Fee.

In most cases the Commission requires submission of the full regulatory fee with a request for waiver in order to expedite the filing process and discourage speculative fee waiver requests.²⁴ However, the rules provide for deferral of this application fee "where good cause is shown and where waiver or deferral of the fee would promote the public interest."²⁵ As in the case of a waiver request, a petitioner may fulfill this requirement by presenting a compelling case of financial hardship and submitting documentation demonstrating that the fee payments impose an undue burden.²⁶ As shown above, SDI does not have the resources to pay the filing fee at this time.

Deferral of the fee in this case — until the Commission determines whether to waive the fee — is in the public interest and consistent with past Commission practice. Deferral is the only way for SDI to retain its license, which is essential for its continued existence and to the generation of cash with which to pay the license fee. The Commission has in other cases agreed to defer fee payments until a decision on a request

²² *Id.* at ¶¶ 6 and 7.

²³ *Id.* at ¶ 8.

²⁴ 47 CFR § 1.1117; Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd. 3558 (April 20, 1990) ("1990 Fee Collection Order").

²⁵ 47 CFR § 1.1117(a).

²⁶ *See Breder Letter.*

for waiver or reduction is made.²⁷ The Commission should reach a similar decision in this case.

IV. Conclusion

For the reasons set forth above, the Commission should grant SDI's request for a waiver of the regulatory fee associated with its use of TDRSS, and defer payment of any regulatory fee until 30 days after the Commission issues a decision regarding the fee waiver request.

Respectfully submitted,

SPACEDATA INTERNATIONAL LLC

By: 

Phillip L. Spector
Laura B. Sherman
Kira A. Merski
Its Attorneys

cc: Frank Van Rensselaer
Thomas Tycz
Cassandra Thomas
Fern Jarmulnek
Jennifer Gilsenan
Steve Spaeth

²⁷ See Letter to Latrice Kirkland, Esq. from Mark Reger, Chief Financial Officer, Federal Communications Commission, dated December 9, 1999 (citing Implementation of Section 9 of the Communications Act, 59 F.R. 30984, 30988 (June 8, 1994)). See also, *1990 Fee Collection Order*, 5 FCC Rcd at n. 29 (Applicants seeking deferrals will not be required to submit a provisional fee as the very nature of the request is based on an inability to do so).

DECLARATION OF FRANK VAN RENSSELAER

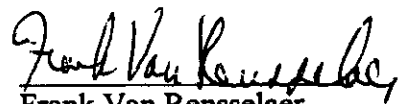
I, Frank Van Rensselaer, declare under penalty of perjury that:

1. I am the Chief Executive Officer of SpaceData International, LLC ("SDI"), a Delaware limited liability company that was created in 1998 to develop SeismicStar, a project to transmit high-volume, high-speed data transmission from ocean-going seismic exploration vessels to data processing centers in the United States through the Tracking and Data Relay Satellite System ("TDRSS"), launched and operated by the National Aeronautic and Space Administration ("NASA").
2. Under SDI's contract with NASA, SDI can utilize up to 3,000 minutes per day of available capacity on certain TDRSS satellites for a payment of \$32 a minute. SDI must submit forecasts of the amount of capability it will need if requested by NASA and provide information about the location and schedule of the seismic exploration vessels. NASA is responsible for pointing the TDRSS antennas at the vessels.
3. In May 2001, SDI received a license from the Federal Communications Commission ("FCC" or "Commission") to operate on a time-share basis four satellites now operating as part of TDRSS. SDI commenced operation in Spring 2001, installing equipment on a vessel operated by Baker Hughes Western Geophysical ("Baker Hughes") on a trial basis.
4. The trial showed that SDI could successfully transmit seismic data in large volumes and high speeds. Baker Hughes, however, declined to enter into a long-term contract with SDI partly because of geographical limitations imposed by SDI's license from the Commission and partly because the marine seismic industry was consolidating and reducing costs. The industry is now moving forward again and appear ready to commence operations with SDI if the geographic limitations in its license can be eliminated or reduced.
5. The Commission has authorized SDI to conduct tests at NASA's facilities in White Sands, New Mexico, which if successful, will enable SDI to seek to remove the geographic limitations and make its service attractive to potential users.
6. At this time, however, SDI has no customers and no operating revenue. I am currently the only employee and I have not been paid a salary since September 2001. Jay Gnowles, who previously served as President, is no longer an employee of the company as of March 2002. Mr. Gnowles was not paid any salary between September 2001 and March 2002.
7. Attached is a statement showing cash on hand and monies owed, as well as SDI's 2001 tax return. SDI does not generate standard cash flow statements or profit and loss statements. SDI has no outstanding bank loans and has not established (and has no

immediate prospect of establishing) a line of credit with any bank or other financial institution. SDI's salable assets consist of SeismicStar receiving equipment at NASA's test grounds in White Sands, New Mexico and one set of transmit equipment and spares that were installed on board the Baker Hughes vessel for testing. That equipment is now located at the General Dynamics SpacePlex in Las Cruces, New Mexico and being prepared to do the tested referred to above. The equipment, costing new approximately \$2.1 million and now worth approximately \$1 million, was financed by General Dynamics and is subject to liens in favor of General Dynamics on a \$2.6 million promissory note. With interest on the note and other charges, SDI owes General Dynamics approximately \$3.2 million. SDI also owes approximately \$1 million to others.

8. All cash derived from the sale of equity interests in SDI has been used to maintain the viability of SDI and pursue regulatory approvals. As a result, SDI currently has access to slightly more than \$12,000 in cash. SDI currently has outstanding debts of approximately \$4 million. SDI continues to carry on discussions with potential strategic investors, but it is impossible to predict when, or if, significant capital will be invested.

9. As a result of the circumstances described above, SDI does not have the resources, nor can it obtain the resources, to pay the \$398,800 regulatory fee.


Frank Van Rensselaer
Chief Executive Officer
SpaceData International LLC

September 4, 2002